

Assembly Bill No. 1897

Passed the Assembly May 31, 2006

Chief Clerk of the Assembly

Passed the Senate August 30, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 19702 of the Government Code, relating to state civil service.

LEGISLATIVE COUNSEL'S DIGEST

AB 1897, Dymally. Civil service: employment discrimination.

The State Civil Service Act prohibits discrimination in public employment on the same bases as in the Fair Employment and Housing Act. Those bases are race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation.

The act also requires the State Personnel Board to issue an order that may require the appointing authority to hire, reinstate, or upgrade an employee with or without backpay and compensatory damages if the board finds that discrimination has occurred in violation of the act.

This bill would, additionally, authorize the board to award reasonable attorney's fees and costs to the employee.

The people of the State of California do enact as follows:

SECTION 1. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part on any basis listed in subdivision (a) of Section 12940, as those bases are defined in Sections 12926 and 12926.1, except as otherwise provided in Section 12940. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. This subdivision is declaratory of existing law.

(b) For purposes of this article, "discrimination" includes harassment.

(c) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288,

288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of the board's decision and order.

(d) (1) Except as otherwise provided in paragraph (2), if the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, compensatory damages, and reasonable attorney's fees and costs, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages and attorney's fees and costs. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph applies to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, compensatory damages, and reasonable attorney's fees and costs, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages and attorney's fees and costs. The order shall include a requirement of reporting the manner of compliance.

(e) Any person claiming discrimination within the state civil service may submit a written complaint that states the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that the board may require. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(f) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not

greater than 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not greater than 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(g) If an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action that will effectuate the purposes of this section.

(h) If a person demonstrates by a preponderance of evidence that the person's opposition to any practice made an unlawful employment practice under this part, or the person's charging, testifying, assisting, or participation in any manner in an investigation, proceeding, or hearing under this part, was a contributing factor in any adverse employment action taken against him or her, the burden of proof shall be on the supervisor, manager, employee, or appointing power to demonstrate by clear and convincing evidence that the alleged adverse employment action would have occurred for legitimate, independent reasons even if the person had not engaged in activities protected under

this part. If the supervisor, manager, employee, or appointing power fails to meet this burden of proof in any administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the person shall have a complete affirmative defense to the adverse employment action.

(i) As used in this part, “adverse employment action” includes promising to confer, or conferring, any benefit, effecting, or threatening to effect, any reprisal, or taking, or directing others to take, or recommending, processing, or approving, any personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

Approved _____, 2006

Governor